BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319

ERIC J BLUMER	:	
	:	**HEARING NUMBER:** 10B-UI-11010
Claimant,	:	
and	:	**EMPLOYMENT APPEAL BOARD DECISION**
DEBNER PAINTING INC	:	
Employer.		

N O T I C E

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A REHEARING REQUEST shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-2-A

D E C I S I O N

UNEMPLOYMENT BENEFITS ARE DENIED

The employer appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. A majority of the Appeal Board, one member dissenting, finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The Employment Appeal Board adopts and incorporates as its own the administrative law judge's Findings of Fact with the following modifications:

The employer had numerous discussions in May of 2009 with the claimant regarding his failure to fulfill his job duties:

- having black paint on several doors
- untidy and unlabelled rack
- not cleaning up work space
- incomplete job tasks
- failure to order materials

During a staff meeting on June 16th, the employer forewarned employees that due to the change in season, employees would be working approximately 40-50 hours weekly. It was brought to the employer's attention that the claimant was coming in 10-15 minutes late on a daily basis. The employer advised the claimant to come in 15 minutes ahead of his scheduled time in order for production to run more smoothly. On June 21st, she advised the claimant he could take longer lunches (45 minutes instead of 30) provided workload allowed. Mr. Blumer continued to take longer lunches regardless of the workload.

On June 27th, the employer noted that there was a 17-foot rack full of trim that required sealing and staining in the doorway. Ms. Debner, specifically, forewarned Mr. Blumer that there was no need for that rack to be in the doorway; she then directed him to move the structure immediately. The claimant did not comply at the time he was issued the directive.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.5(2)(a) (2009) provides:

> *Discharge for Misconduct*. If the department finds the individual has been discharged for misconduct in connection with the individual's employment:
>
> The individual shall be disqualified for benefits until the individual has worked in and been paid wages for the insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The Division of Job Service defines misconduct at 871 IAC 24.32(1)(a):

> *Misconduct* is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation

> or disregard of standards of behavior which the employer has the right to expect of employees, or in the carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

The Iowa Supreme court has accepted this definition as reflecting the intent of the legislature. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665, (Iowa 2000) (quoting Reigelsberger v. Employment Appeal Board, 500 N.W.2d 64, 66 (Iowa 1993).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 NW2d 661 (Iowa 2000).

The record establishes that Mr. Blumer received several reprimands during his tenure of employment. He had knowledge of the January 13, 2010 all-staff meeting, yet he overslept and missed the same. In May of 2010, the employer provided him with a laundry list of items that the employer directed the claimant to fulfill that appeared to be an ongoing concern. From this record, we can reasonably surmise that Mr. Blumer oftentimes failed to comply with the employer's directives. Continued failure to follow reasonable instructions constitutes misconduct. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. See Woods v. Iowa Department of Job Service, 327 N.W.2d 768, 771 (Iowa 1982). The claimant failed to participate in the hearing to refute any of the employer's testimony, much less provide any good faith reason for why he repeatedly failed to follow the employer's reasonable directives.

As for the June 14th, 2010 meeting wherein the employer warned all employees about lunch time, the claimant continued to take long lunches disregarding the employer's interests. When the employer reprimanded the claimant on June 22nd for taking too long a lunch break, the claimant continued to disregard the employer. In acting so, the claimant displayed "…careless-ness or negligence of such degree of recurrence as to manifest equal culpability…or [shows] an

intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer…"
See, 871 IAC 24.32(1)"a"

The final incident (June 27th) was clearly the proverbial 'straw that broke the camel's back.' Mr. Blumer's failure to remove the rack as he was so directed at the time the employer saw it was yet another act of insubordination. His blatant and continued disregard for the employer's interest can only be characterized as misconduct within the meaning of the statute. For the foregoing reasons, we conclude that the employer satisfied their burden of proof.

DECISION:

The administrative law judge's decision dated September 22, 2010 is **REVERSED**. The claimant was discharged for disqualifying misconduct. Accordingly, he is denied benefits until such time he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. See, Iowa Code section 96.5(2)"a".

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John A. Peno

_____
Elizabeth L. Seiser

AMG/fnv

DISSENTING OPINION OF MONIQUE F. KUESTER:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would affirm the decision of the administrative law judge in its entirety.

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Monique F. Kuester

AMG/fnv